IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

MFA.No. 754 of 2002()

OPMV.49/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, WAYANAD, KALPETTA
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APPELLANTS(PETITIONER):
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1. **PREMA, W/O. LATE CHANDRAN AGED 35 YEARS RESIDING AT NOORUMPALLIYIL, ANCHUKUNNU POST, MANANTHAVADY TALUK, WAYANAD DISTRICT.**

2. **RESHMA D/O. LATE CHANDRAN MINOR AGED 12 YEARS, RESIDING AT NOORUMPALLIYIL, ANCHUKUNNU POST, MANATHAVADY TALUK, WAYANAD DISTRICT.**

3. **RAHUL, S/O. LATE CHANDRAN MINOR AGED 7 1/2 YEARS, RESIDING AT NOORUMPALLIYIL, ANCHUKUNNU POST, MANATHAVADY TALUK, WAYANAD DISTRICT.**

4. **PARUKUTTY AGED 58 YEARS, MOTHER OF LATE CHANDRAN, RESIDING AT NOORUMPALLIYIL, ANCHUKUNNU POST, MANANTHAVADY TALUK, WAYANAD DISTRICT. (APPELLANTS 2 AND 3 BEING MINORS REP. BY THEIR MOTHER AND GUARDIAN 1ST APPELLANT).**

BY ADV. SRI.N.J.ANTONY

RESPONDENTS(RESPONDENTS):
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* 1. **K.K. MOIDEENKUTTY AGED 38 YEARS, S/O. MOHAMMED, KAVAKKUNNUMMEL HOUSE, KIZHAKKOTH POST, KODUVALLY VIA, KOZHIKODE DIST. (DRIVER OF LORRY NO.KL-11 /5985. D.L.NO.NOT KNOWN). (DELETED)**

*** 2. K.P. USMAN AGE NOT KNOWN S/O. MUHAMMED KAVAKKUNNUMMEL HOUSE, KIZHAKKOTH POST, KODUVALLY VIA, KOZHIKODE DISTRICT. (OWNER OF LORRY NO.KL-11 /5985). (DELETED)**

(* THE NAME OF RESPONDENTS 1 & 2 ARE DELETED FROM PARTY ARRAY AT THE RISK OF THE APPELLANT VIDE ORDER DATED 30.9.2005 IN I.A.NO.2869/2005)

3. DIRECTOR OF INSURANCE, KERALA STATE INSURANCE DEPARTMENT, DISTRICT INSURANCE OFFICE, KOZHIKODE. (POLICY NO.397/736/94/KKD).

BY GOVERNMENT PLEADER SRI.K.C.SANTHOSHKUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.754 OF 2002 ()

Dated this the 11th day of October, 2007

J U D G M E N T

KOSHY,J.

Husband of the 1st appellant suffered fatal injuries in a motor accident on 13.11.1994. He was admitted in the Medical College Hospital, Calicut and after about two months treatment, on 9.1.1995 he succumbed to the injuries. Ext.A4 is the post mortem certificate. Tribunal found that the accident occurred due to the negligence of the 1st respondent driver of the lorry bearing registration No.KL-11/5985. The above lorry was owned by the 2nd respondent and it was insured by the 3rd respondent Kerala State Insurance Department. However, the total amount awarded was only Rs.1,27,600/-. Application was filed claiming an amount of Rs.5 lakhs as compensation by the widow, two minor children and two aged parents. Father died and mother is only alive. It is averred by the claimants that he was a timber loading worker and his monthly income was Rs.4,000/-. He was only 35 years at the time of accident.

He was an able bodied man maintaining the family consisting of wife, two children and parents at the time of accident. Tribunal fixed only Rs.750/- as the notional income. The accident occurred in 13.11.1994 and he died on 9.1.1995. Even an unskilled worker will get about Rs.150/- in Kerala during that time. In any event, he was a timber loading worker and atleast he will be getting Rs.100/- per day and he may get 25 to 26 days work, more than Rs.2,500/- a month. Deducting $^{1}/_{3}^{rd}$ of the income for personal expenses, we can safely fix Rs.1,650/- as the monthly contribution of the family. He was aged 35, under the 2nd Schedule, 16 is the apt multiplier even though tribunal has taken 17 as the multiplier. Therefore compensation payable will be Rs.1,650 x 12 x 16 = Rs.3,16,800/-. Tribunal has granted dependency compensation of Rs.1,08,000/-. Therefore additional compensation under that head will be Rs.2,08,800/-. It is contended that he was in the hospital for 58 days and he was given treatment and only Rs.2,000/- was awarded. We are of the view that another Rs.3,000/- more can be awarded for treatment expenses. He suffered fatal injuries and for 58 days he suffered the pain and atleast Rs.10,000/- ought have been granted for pain and sufferings. But tribunal has granted only Rs.5,000/-. So the

additional amount is Rs.5,000/-. It was argued that his wife was only 29 years and children were minors. The amount granted for consortium as well as loss of love and affection are very meager. Considering the total amount granted, we are not enhancing the same. The additional amount of Rs.2,16,800/- should be deposited by the 3rd respondent Kerala State Insurance Department with 7.5% interest from the date of application till its deposit over and above the decreed amount by the tribunal and on deposit of the above additional amount, 4th appellant, mother of the deceased is entitled to receive Rs.20,000/- and 1st appellant wife is entitled to Rs.75,000/-. Balance amount including the entire interest should be deposited in a nationalised bank and 2nd appellant should be allowed to withdraw the same at the time of her marriage and 3rd appellant is allowed to withdraw the amount at the time of his attaining the age of 21 years. Appeal is accordingly partly allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.754 OF 2002 ()

J U D G M E N T

11th October, 2007